

# Town Council Meeting: 07 August 2008



Town of Garrett Park  
PO Box 84  
4600 Waverly Avenue  
Garrett Park, MD 20896

Special Meeting of Town Council  
Garrett Park Town Hall  
10814 Kenilworth Avenue  
Garrett Park, MD 20896

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## Draft MINUTES

**Meeting Call to Order:** Mayor Keller called the meeting to order at 8:00 PM. Present were Councilmembers Berry, Hansen, Irons, Mandel, and Wegner. Also present was Administrator Pratt, Setback Advisory Committee Chair Harry Gordon, Town Archivist Barbara Shidler, Rick Folkers of the *Bugle*, a reporter from the *Gazette*, and a large number of Town residents, including Cindy Kratz, Peter Kratz, Peter Cohen, Allison Pierce, Nancy Schwartz, Ken Schwartz, Loretta Bonner, Charlie Snyder, Michael Colella, John Martin, Elaine Martin, Mike Grieb, Randy Auerbach, Marion Green, Kevin Pope, Rich Lang, Aileen Huffman, John Tollefson, Marcia Tollefson, Bruce Artim, George Martin, Stephani Salvatore, Christine Fischman, Carolyn Shawaker, Phil Schulp, Robin Daly. Also present was Attorney Michelle Rosenfield, Counsel for the Plaintiffs John and Elaine Martin in Martin v. Garrett Park and Mike Dart from MGD Design, the Martin's builder.

Mayor Keller reviewed the agenda, noting that the introduction of Ordinance 2008-05 and the consideration of appointing a hearing officer for possible variance hearings at the September Council meeting were the only two items on the agenda. The agenda was approved without objection.

Mayor Keller then explained that the purpose of Ordinance 2008-05: AN ORDINANCE TO AMEND CHAPTER 4 OF THE GARRETT PARK TOWN CODE TO DELETE THE COMBINED SETBACK REQUIREMENT AND TO ADD A LOT COVERAGE REQUIREMENT was solely to change the area limitation for the main building on a lot in Section 402 (3) and related parts of the Town Code from an 82% minimum combined setback requirement to its inverse, a maximum 18% lot coverage. Mayor Keller noted that in 1992, when the 82% minimum combined setback requirement was adopted, the Town had clear authority to regulate the setbacks of the main building from lot lines. Mayor Keller noted that the 1992 Ordinance (Ordinance 1992-02) had been sustained by referendum and had been enforced by the Town since it became effective. The Mayor went on to note that in 2006 the Maryland State Legislature passed legislation that gave municipalities in Maryland expanded zoning authority, including regulating lot coverage directly, and that the proposed ordinance proposes to change the Town Code to place it on this new legal foundation without alteration in the ordinance's regulatory impact on

any property within the Town. Mayor Keller noted that there is also language added regarding how the Town treats the calculation of net lot coverage. Mayor Keller then asked that the motion to introduce Ordinance 2008-05 be moved for consideration.

Councilmember Irons **MOVED**

That Ordinance 2008-05: AN ORDINANCE TO AMEND CHAPTER 4 OF THE GARRETT PARK TOWN CODE TO DELETE THE COMBINED SETBACK REQUIREMENT AND TO ADD A LOT COVERAGE REQUIREMENT be introduced. (A copy of the introduced ordinance is attached to these minutes) Councilmember Wegner seconded the motion. Mayor Keller then asked for discussion from the Council.

Councilmember Berry raised a point of order and proposed an amendment to the ordinance.

Councilmember Berry **MOVED**

That Ordinance 2008-05 be amended by adding the following  
whereas:

“Whereas all permits, variances, and applications for permits and variances submitted prior to 08 August 2008 shall fall under the requirements of the Town Code of Ordinances in force at the time the permit or variance was approved, or an application for a variance or permit was submitted.”

The motion to amend **FAILED** for lack of a second.

Councilmember Wegner asked that the audience note the process the Mayor and Council proposes to follow, pointing out that the proposed ordinance makes no substantive changes in the Town’s zoning, but puts the Town’s Code on a sound legal basis by grounding it in the recently promulgated revisions in Maryland law.

Mayor Keller commented that this was a necessary predicate to a careful process of reviewing and up-dating the Town’s Code in light of its new zoning authority, and that he and the Council were committed to an open, inclusive, and deliberate process for considering any substantive changes to the Code.

Councilmember Berry stated that he had concerns about the timing of the introduction and proposed adoption of Ordinance 2008-05, that citizens of the Town are owed a better explanation, that they need more time to understand the issues, and for these reasons he will vote against introducing the ordinance at this time even though he understands and supports the intent of the ordinance.

Mayor Keller then opened up the floor to Town residents. There was extended discussion for over one hour in which numerous residents spoke about a range of issues, including those noted above. Concern was expressed by a number of residents over the anticipated timeline for consideration of the proposed ordinance.

At 9:55 PM Councilmember Wegner **MOVED** the previous question and was seconded by Councilmember Irons. A motion for the previous question not being subject to debate, the Mayor called for the vote, and the motion was **PASSED** unanimously.

The motion for the previous question having been passed, the Mayor called for a vote on the motion on the floor, the introduction of Ordinance 2008-05. The motion to introduce was **PASSED**, with Councilmembers Hansen, Irons, Mandel, and Wegner voting 'Aye,' and Councilmember Berry voting 'Nay.'

At 10:00 PM Mayor Keller called for a brief recess in the meeting.

At 10:15 Mayor Keller called the meeting back to order and briefed the Council on his desire to appoint a hearing officer to conduct the anticipated variance hearing on building permit 022508-BA01, filed by John and Elaine Martin for the construction of a new front porch. The Mayor explained that the Martins are in litigation with the Town over this very matter, and that an application for a variance from the Martins was expected as the judge in the litigation had instructed the Martins to file for a variance, and that there was an ever-present risk of waiver of attorney-client privilege if Councilmembers and the Mayor engaged in substantive discussion of the facts in this case, some of which were subjects of that litigation, it would be better for the Mayor and Council not to take their usual active role in a variance hearing. Mayor Keller explained that the hearing officer would serve as the presiding official at the hearing and would present to the Council a draft opinion, with proposed findings of fact and conclusions in law. The Mayor stated that the Council in no way gave up its responsibilities, and would be able to accept, reject, or amend the hearing officer's draft opinion. Mayor Keller asked that the Council give him authority to appoint a hearing officer for variance hearings, with the Council's advice and consent.

Councilmember Mandel **MOVED** that the Mayor be authorized to appoint variance hearing officers, with the advice and consent of the Council. Councilmember Irons seconded the motion. There was extended discussion among Councilmembers and then from the audience. At 10:40 PM the Mayor called for a vote on the motion on the floor, and it was **PASSED** unanimously.

Councilmember Hansen asked the Mayor to consider having the September meeting convene early, perhaps at 7:00 or 7:30 PM, considering the possibility of two lengthy hearings. Mayor Keller agreed to work with the Council to set an earlier time, if it seemed appropriate.

The meeting adjourned at 10:45 PM.

Respectfully submitted,

[ TOWN SEAL]

Edwin Pratt, Jr., Clerk-Treasurer

**Ordinance No.: 2008-05**

Introduced: 08/07/2008

Notice of Hearing to County: 08/08/2008

Public Hearing: 09/08/2008 @ 8:05 PM

**AN ORDINANCE TO AMEND CHAPTER 4 OF THE GARRETT  
PARK TOWN CODE TO DELETE THE COMBINED SETBACK  
REQUIREMENT AND TO ADD A LOT COVERAGE  
REQUIREMENT.**

WHEREAS, Article 23A, Section 2(a) of the Maryland Code, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Garrett Park, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary; and

WHEREAS, Section 78-17(55) of the Charter of the Town of Garrett Park empowers the council to regulate or restrict size of buildings and other structures, the percentage of lot occupancy, the size of yards, courts and other open spaces, location of buildings, structures, and land for residence or other purposes; and

WHEREAS, in 1992 the Maryland General Assembly enacted Chapter 573 of the 1992 Laws of Maryland, codified at Article 28, Section 8-115.1 of the Maryland Code, to authorize the legislative body of a municipal corporation within Montgomery County, such as the Town of Garrett Park, to regulate the construction, repair, erection or remodeling of single family residential houses, buildings or other structures on land zoned for single family residential use, as it relates to, among other things, the location of

structures on a property, including setback requirements, and to ratify building requirements imposed before October 1<sup>st</sup>, 1992; and

WHEREAS, on July 20, 1992, the Town Council adopted Ordinance Number 92-2 which added Section 402(b)(3) to the Town Code and established a minimum combined setback requirement pursuant to the Town Council's authority to impose building requirements, including the regulation of building setbacks; and

WHEREAS, in 2006, Article 28, Section 8-115.1 of the Maryland Code was amended to grant to municipal corporations in Montgomery County, such as the Town of Garrett Park, the authority to regulate, among other elements, the dimensions of structures, including height, bulk, massing and design, and lot coverage, including impervious surfaces; and

WHEREAS, the Town Council finds that the amendment of Section 402(b)(3) of the Town Code will provide clarity and certainty regarding the requirements for construction of buildings within the Town; and

WHEREAS, to comply with Article 28, Section 8-115.1 of the Maryland Code, on the 9<sup>th</sup> day of August, 2008, a copy of the following Ordinance was submitted to the Montgomery County Council for its comments; and

WHEREAS, no comments were received from the Montgomery County Council; and

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council conducted a public hearing at which it considered the following Ordinance in public session assembled on the \_\_\_\_ day of \_\_\_\_\_, 2008; and

WHEREAS, the Town Council finds that amendment of Section 402(b)(3) of the Garrett Park Town Code and of related provisions in Chapter 4 of the Town Code as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, the Town Council of the Town of Garrett Park does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE GARRETT PARK TOWN CODE TO DELETE THE COMBINED SETBACK REQUIREMENT AND TO ADD A LOT COVERAGE REQUIREMENT.

SECTION 1. BE IT ORDAINED AND ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Article 23A of the Maryland Code, Article 28, Section 8-115.1 of the Maryland Code, and the Town Charter, that Section 402 of Chapter 4 of the Town Code is hereby amended to read as follows:

Section 402. Building Setback Lines **and Lot Coverage**

(a) Purpose.

(1) To protect the public health, safety and welfare of the Citizens of Garrett Park and, more specifically, to preserve and protect the lands and improvements within the Town by ensuring that all proposed new construction and alterations to buildings in the Town be compatible with the Town's existing scale, natural topography, vegetation, trees, physical setting, and density of development.

(2) To establish stricter or additional building location, **or** setback **and lot coverage** requirements than those of the current Montgomery County Zoning Ordinance for the construction, repair, erection, or remodeling of houses, buildings, or other structures on land zoned for single-family residential use.

(3) To provide a procedure for a variance from the strict application of the building requirements contained in this section.

(b) Setback **and Lot Coverage** Requirements. All buildings on land zoned for single-family residential use hereafter erected or altered shall adhere (except as provided in Section 403(d)) to the setback **and lot coverage** requirements of the Montgomery County Zoning Ordinance and definitions in effect at the time of the application for a building permit, and to the additional setback **and lot coverage requirements** set forth below:

\* \* \*

**(3) ~~Minimum combined setback.~~ The total of the combined setback areas for main buildings, being the sum of front, rear, and side yards, shall not be less than eighty-two (82) per cent of the entire lot area. Maximum lot coverage. The maximum percentage of the net lot area that may be covered by a main building, including, but not limited to, chimneys, covered and uncovered porches, decks, steps and stoops, covered**

**breezeways, bay and bow windows and any other structure above the ground plane and attached to such building, is eighteen (18) per cent.**

(4) Adjustments of setback and lot coverage requirements.

(4.1) Where applicable, either of the following adjustments may be made in the required setback:

(4.1.1) If the total side setback requirement is more than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line, it may be reduced to not less than twenty-five (25) feet for lots with over sixty (60) feet in width at the main front building line or twenty (20) feet for lots with sixty (60) feet or less in width at the main front building line provided the resulting reduction in side yard areas is offset by an equivalent increase in the square footage of the rear and/or the front yard areas.

(4.1.2) If the rear setback requirement is more than twenty-five (25) feet for lots with over ninety (90) feet in depth or more than fifteen (15) feet for lots with ninety (90) feet or less in depth, it may be reduced to not less than twenty-five (25) feet for lots with over ninety (90) feet in depth or fifteen (15) feet for lots with ninety (90) feet or less in depth provided the resulting reduction in rear yard area is offset by an equivalent increase in the square footage of the side and/or the front yard areas.

(4.2) Building setback lines **and lot coverage requirements** shall be subject to adjustment under Section 403 (Variances) of this Code of Ordinances to the extent necessary to assure that a reasonable net lot area is available for the construction of any additions to main and accessory buildings.

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and



28 of the Maryland Code and the Town Charter, that Section 403(c)(1)(1.1) of Chapter 4 of the Town Code is hereby amended to read as follows:

Section 403. Variances

\* \* \*

(c) Conditions upon which relief may be predicated

(1) No variance shall be granted unless the Council finds, on the basis of the evidence of record that good cause has been shown on the following grounds for relief from the strict application of the building requirements.

(1.1) Because of the unusual dimensions, shape, topography or other exceptional characteristics of the lot, the lot cannot accommodate the building sought to be erected if the setback **or lot coverage** requirements of Section 402 are strictly applied to the construction and the strict and literal application of Section 402 to the lot would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship on, the owner of the property.

SECTION 3. AND BE IT FURTHER ORDAINED AND ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2008, by the Town Council of the Town of Garrett Park, acting under and by virtue of the authority granted to it by Articles 23A and 28 of the Maryland Code and the Town Charter, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the \_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

TOWN OF GARRETT PARK

\_\_\_\_\_  
Edwin Pratt, Jr., Clerk-Treasurer  
Town of Garrett Park

\_\_\_\_\_  
Christopher Keller, Mayor  
Town of Garrett Park

**Bold and Underline** indicates new material

**~~Bold and Strikethrough~~** indicates material deleted

\* \* \* indicates material unchanged

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Of Counsel to: Stein, Sperling, Bennett  
De Jong, Driscoll & Greenfeig,  
P.C.

August 8, 2008

Mr. Michael Knapp  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

RE: Town of Garrett Park

Dear Mr. Knapp:

I am writing to you on behalf of the Town of Garrett Park. The Town Council is considering a proposed ordinance to regulate lot coverage by providing that main buildings must not cover more than 18% of the net lot area. This requirement is very similar to Section 59-C-18.113(a)(4) of the County Zoning Ordinance (Garrett Park Overlay Zone) which provides that the maximum percentage of net lot area that may be covered by buildings, including accessory buildings, is 20%. The proposed Garrett Park ordinance would establish an 18% maximum lot coverage but would exclude accessory buildings from the calculations. This provision is similar to an existing provision in the Garrett Park Town Code that requires a minimum combined setback of at least 82% of the lot. With the adoption of the lot coverage requirement, the combined setback requirement will be deleted.

Maryland Code, Article 28, Section 8-115.1 (c) (2) requires that before the Town adopts an ordinance regulating the construction, repair, erection or remodeling of single-family residential houses, buildings, or other structures on land zoned for single-family residential use as it relates to lot coverage, including impervious surfaces, the Town must hold a public hearing and transmit a copy of the proposed ordinance to the Montgomery County Council at least thirty days before the public hearing.

We are enclosing herewith a copy of the ordinance which will be the subject of a public hearing to be held by the Town Council on September 8, 2008. Bold and underlined indicates new material, bold and strike-through indicates

material deleted, and asterisks indicate material unchanged. If the County Council has any questions regarding the proposed ordinance, we would appreciate receiving those comments by September 3, 2008 so that they can be considered at the public hearing.

If you, any member of the County Council or any member of your staff have any questions regarding this matter, please not hesitate to call us. Thank you for your consideration.

Very truly yours,

*David R. Podolsky*

David R. Podolsky  
Town Attorney

DRP:shk

Enclosure

cc: The Hon. Christopher Keller, Mayor  
Edwin Pratt, Jr., Town Administrator  
Town of Garrett Park Council  
Jeffrey Zyontz, Esquire